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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,200	09/24/2003	Edward J. Negola	1702-001P/FLS	2654
22831	7590	08/05/2004		EXAMINER EDWARDS, NEWTON O
SCHWEITZER CORNMAN GROSS & BONDELL LLP 292 MADISON AVENUE - 19th FLOOR NEW YORK, NY 10017			ART UNIT 1774	PAPER NUMBER

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/669,200	NEGOLA, EDWARD J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	N Edwards	1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 June 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) 1-8, 10-12, 17 and 18 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 9 and 13-16 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

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Applicant's election without traverse of claims 9 and 13-16 in the reply filed on 6/25/04 is acknowledged.

Claims 9 and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: polyester fibers and disperse dyeable olefin fibers. The current claimed invention is unsupported in the specification "a spun yarn of fiber that is a blend of polyester (polymer) and disperse dyeable olefin (polymer). "see page 33 section b for example. In other words, the current claim 9 is a spun yarn or fiber that is a blend of polyester polymer, olefin polymer, PETG and maleic anhydride (see claim 13). This invention is not supported in the spec. See page 16 Line 20, which show the disperse dyeable olefin is a fiber not a polymer as claimed.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to for failing to provide an adequate written description of the claimed invention and for failing to provide an enabling disclosure.

The specification as filed fails to set forth 1) adequate written description and an enabling disclosure for a spun yarn or fiber that is a blend of polyester polymer, olefin polymer, PETG, and maleic anhydride and 2) the meaning of disperse dyeable olefin.

Claims 9 and 13-16 are rejected under 35 U.S.C. 112, first paragraph, for the reason given above in the objection.

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Claims 9 and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 "a spun yarn or fiber" renders the claim indefinite since the alternative expressions are not equivalent the scope of the preamble is unknown. See claims 13-16 for the same problem, MPEP 2173.0(h).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 9 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sheth (U.S. 5,576,366).

Sheth teaches a fiber comprising a blend of a polyester and a disperse dyeable olefin. See column 3, lines 5-45.

For the record, in order for applicant to overcome all the 112s; art rejection, and to place the claim 9 in a better condition for allowance the following claim should be written.

A Spun yarn comprising a fiber blend of polyester fiber and a polyolefin fibers wherein the polyolefin fibers is a mixture of olefin mixed with a modifier comprising amorphorous PET and maleic anhydride.

For the record PETG (is Commercially available from Eastman Chemical Company). Ordinarily is an amorphous polymer of terephthalic acid esterified with a mixture of predominately ethylene glycol and lesser amount of 1,4-cyclohexanedimethanol.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Edwards whose telephone number is 571-272-1521. The examiner can normally be reached on Monday-Friday from 6:00 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

N. Edwards/af  
August 2, 2004



N. EDWARDS  
PRIMARY EXAMINER